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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:11-cv-00776-MHB
Internal Use Only**

Best Western International Incorporated v. Patel et al
Assigned to: Magistrate Judge Michelle H Burns
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 04/20/2011
Jury Demand: None
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

**Best Western International
Incorporated**
an Arizona non-profit corporation

19 Tms page 5-7

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V.

Defendant

Hiten Patel
an individual

Defendant

**Satkar Hospitality Investments
Incorporated**
a California corporation

Date Filed	#	Docket Text
04/20/2011	<u>1</u>	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-5200164, filed by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Civil Cover Sheet)(REK) (Entered: 04/20/2011)
04/20/2011	<u>2</u>	SUMMONS Submitted by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Summons)(REK) (Entered: 04/20/2011)
04/20/2011	<u>3</u>	Corporate Disclosure Statement by Best Western International Incorporated (submitted by Michelle Swann). (REK) (Entered: 04/20/2011)
04/20/2011	<u>4</u>	Filing fee paid, receipt number PHX 0970-5200164. This case has been assigned to the Honorable Michelle H. Burns. All future pleadings or documents should bear the correct case number: CV 11-00776-PHX-MHB. Magistrate Election form attached. (Attachments: # <u>1</u> Magistrate Consent Form)(REK) (Entered: 04/20/2011)
04/20/2011	<u>5</u>	Summons Issued as to Hiten Patel, Satkar Hospitality Investments Incorporated. (Attachments: # <u>1</u> Summons)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 04/20/2011)

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 BEST WESTERN INTERNATIONAL,
13 INC., an Arizona non-profit corporation,

14 Plaintiff,

15 v.

16 HITEN PATEL, an individual; SATKAR
17 HOSPITALITY INVESTMENTS, INC., a
18 California corporation,

19 Defendants.

No.

Verified Complaint for Federal Trademark
Infringement, False Designation of Origin,
Federal Trademark Dilution, Breach of
Contract, Post Termination Use of
Trademarks, Unfair Competition, State
Trademark Dilution, and Common Law
Trademark Infringement

20 Plaintiff Best Western International, Inc. ("Best Western"), for its Verified
21 Complaint against Defendants Hiten Patel, an individual and a California resident, and Satkar
22 Hospitality Investments, Inc., a California corporation, alleges as follows:

23 **NATURE OF THE ACTION**

24 1. This is an action for breach of contract, federal trademark infringement,
25 and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15

1 U.S.C. §§ 1051 *et seq.*), and related common law and Arizona statutory causes of action
2 arising from Defendants' refusal to cease and desist their unauthorized use of Best Western's
3 trade name, trademarks, service marks, logos, and other intellectual property and similar
4 identifying symbols (the "Best Western Symbols") in violation of Best Western's federal and
5 common law trademark rights.
6

7 2. Defendants' continued use of Best Western Symbols also constitutes a
8 breach of contract, giving rise to liquidated damages.

9 **THE PARTIES, JURISDICTION, AND VENUE**

10 3. Plaintiff Best Western is a non-profit corporation organized under the
11 laws of the State of Arizona with its headquarters located in Phoenix, Arizona.
12

13 4. Defendant Satkar Hospitality Investments, Inc. ("Defendant Satkar") is a
14 California corporation with its principal place of business in California.

15 5. Defendant Hiten Patel ("Defendant Patel") is an individual, is believed to
16 be a resident of California, and is the Voting Member for Defendant Satkar.

17 6. This Court has jurisdiction over the Lanham Act claim set forth below by
18 virtue of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), and over the other claims set
19 forth below by virtue of 28 U.S.C. §§ 1332, 1367 and/or 1338(b).
20

21 7. There are no matters pending between the parties in any other jurisdiction
22 regarding Defendants' Lanham Act violations.

23 8. Best Western is an Arizona non-profit corporation with its principal place
24 of business in Phoenix, and its witnesses are either located in Phoenix or available in Phoenix,
25 and Defendants executed a contract that contained a forum selection clause requiring all

1 disputes arising from that contract be resolved by an Arizona state or federal court.
2 Defendants' trademark violation impacts the goodwill and reputation of Best Western and all
3 of its members, resulting in a significant, direct harm and effect on Best Western, an
4 American corporation engaged in commerce in the United States, Canada, and worldwide.
5 Defendants contractually agreed to liquidated damages in the event that they continued to use
6 Best Western Symbols after the termination of their membership. Defendants' continued use
7 of the Best Western Symbols, a business name representing quality and reputation that is sold
8 for use by others, wrongfully capitalizes on the goodwill and reputation of Best Western. If
9 the Best Western name is diluted and the reputation tainted, all Best Western members and
10 customers are adversely impacted.
11
12

13 9. Venue in this judicial district and the exercise of personal jurisdiction
14 over Defendants by this Court are proper pursuant to 28 U.S.C. § 1391(b) and (c) and
15 because, among other reasons: (a) the Defendants expressly contractually agreed to litigate all
16 disputes with Best Western arising from or related to the Best Western Membership
17 Application and Agreement executed by Defendants on or about September 7, 1994 (the
18 "Membership Agreement"), or any relationship between the parties, in the Arizona state or
19 federal courts; (b) Defendants have caused events to occur and injuries to result in the State of
20 Arizona; and (c) Defendants aimed their conduct at Best Western knowing that Best Western
21 is located in Arizona, and harming Best Western in Arizona. *See* Membership Application
22 and Agreement, attached here as Exhibit 1, Paragraphs 37-38.
23
24
25

GENERAL ALLEGATIONS

10. Best Western operates as a membership organization consisting of individually owned and operated hotels (i.e., its members). The rights and obligations of Best Western's members are determined by the membership and are set forth in the Membership Agreement, Best Western's Bylaws & Articles, Best Western's Rules and Regulations, and other Best Western "Regulatory Documents" as that term is defined in Best Western's Bylaws (the "Regulatory Documents").

11. Best Western provides its members with a worldwide reservation system and worldwide marketing campaigns, as well as an option to participate in collective purchasing of hotel equipment, furnishings, and supplies (the "Best Western Services"). Best Western employs a large number of employees worldwide who are dedicated to providing member hotels with the Best Western Services.

12. Each Best Western member is authorized to use the Best Western Symbols in connection with its hotel pursuant to a limited, non-exclusive license (the "Best Western License"), which is set forth in the Membership Agreement. *See* Membership Agreement at ¶¶ 1, 19-26.

13. Best Western first adopted "Best Western" as its trade name in 1947. Shortly thereafter, Best Western adopted and began using "Best Western" as a trademark identifying hotel services provided by member hotels that were affiliated with Best Western. Best Western has continuously and extensively promoted its trade name and trademark in interstate commerce since 1947. As a result of this extensive promotion, the trade name and trademark have become famous among consumers as a source-identifying symbol.

1 14. Since 1959, Best Western has registered with the United States Patent
2 and Trademark Office ("USPTO") various trademarks, service marks, and collective
3 membership marks. On April 14, 1959, the Best Western logo was first registered as a service
4 mark by the USPTO under Registration No. 677,103. Best Western has developed the Best
5 Western Symbols at great expense over the past decades.
6

7 15. Best Western owns the following registrations for Best Western Symbols
8 and the marks referenced in these registrations:

9 (a) a Best Western logo was registered as a collective membership
10 mark by the USPTO on June 8, 1971, under Registration No. 914,812, which was registered
11 to Western Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still
12 active;
13

14 (b) a Best Western logo was registered as a service mark by the
15 USPTO on June 8, 1971, under Registration No. 914,813, which was registered to Western
16 Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still active;
17

18 (c) a Best Western logo was registered as a service mark by the
19 USPTO on August 30, 1977, under Registration No. 1,072,360;

20 (d) a Best Western logo was registered as a collective membership
21 mark by the USPTO on September 27, 1977, under Registration No. 1,074,300 to Best
22 Western, Inc. and assigned to Best Western International, Inc. in 1979, and is still active;

23 (e) the Best Western word mark was registered by the USPTO as a
24 service mark on February 3, 1987, under Registration No. 1,427,735;
25

1 (f) the Best Western word mark was registered by the USPTO as a
2 collective service mark on March 10, 1987, under Registration No. 1,432,431;

3 (g) the Best Western crown logo design was registered by the USPTO
4 as a service mark on December 6, 1988, under Registration No. 1,515,712;

5 (h) Best Western's current logo was registered by the USPTO as a
6 trademark on June 20, 1995, under Registration No. 1,900,620;

7 (i) Best Western's current logo was registered by the USPTO as a
8 service mark on November 7, 1995, as Registration No. 1,933,830;

9 (j) Best Western's current logo was registered by the USPTO as a
10 service mark on November 25, 1997, as Registration No. 2,116,079;

11 (k) Best Western's current logo was registered by the USPTO as a
12 service mark on October 14, 1997, as Registration No. 2,105,546;

13 (l) Best Western's current logo was registered by the USPTO as a
14 service mark on March 3, 1998, as Registration No. 2,140,332;

15 (m) the Best Western globe and pillow logo design was registered by
16 the USPTO as a service mark on December 24, 2002, as Registration No. 2,665,955;

17 (n) the BEST WESTERN word mark was registered by the USPTO as
18 a service mark on August 3, 2004, under Registration No. 2,869,617;

19 (o) the BESTWESTERN.COM word mark was registered by the
20 USPTO as a service mark on April 19, 2005, under Registration Nos. 3,107,814, 3,080,655
21 and 3,083,667;

1 (p) BW was registered by the USPTO as a service mark on November
2 29, 2005, under Registration No. 3,020,526; and

3 (q) Best Western has registered a variety of other designs and phrases
4 as service marks in connection with the trade of hotel and motel lodging, many of which
5 incorporate the words BEST WESTERN.
6

7 16. All of the registrations described above are currently in full force and
8 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the
9 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.

10 17. The Best Western Symbols are inherently distinctive and possess strong
11 secondary meaning.
12

13 18. The Membership Agreement and Regulatory Documents establish the
14 minimum standard scores that each member must meet in order to achieve and maintain
15 membership. As a result, consumers worldwide associate Best Western Symbols with high
16 quality in the hotel/motel industry.
17

18 19. A key element of Best Western's branding effort is the display of the
19 Best Western Symbols on the premises of member hotels through signs, publications, and
20 other public displays.

21 20. Upon default by a member of certain of its obligations to Best Western,
22 including obligations set forth in the Membership Agreement and Regulatory Documents, the
23 Best Western Board of Directors may terminate the membership and the Best Western
24 License.
25

1 21. Within 15 days following the termination of membership, the former
2 member must cease and desist from using, and remove from public view, all Best Western
3 Symbols and all references to Best Western. The former member is also required to cease and
4 desist from using any item that is similar to the Best Western Symbols in spelling, sound,
5 appearance, or in any other manner.
6

7 **DEFENDANTS' BEST WESTERN MEMBERSHIP**

8 22. On or about July 7, 2005, Defendant Satkar and Defendant Patel
9 executed the Membership Agreement attached here as Exhibit 1 as the owner of the Hotel and
10 as the Voting Member, respectively.
11

12 23. Upon Best Western's approval of the Membership Agreement, Defendant
13 Satkar and Defendant Patel were bound by the Membership Agreement and Regulatory
14 Documents.
15

16 24. Defendant Satkar and Defendant Patel owned and operated the hotel
17 formerly known as the Best Western Civic Center Motor Inn, located at 364 Ninth Street, San
18 Francisco, California, 94103-3836, which is referenced in Best Western's records as property
19 T-05108 (the "Hotel").
20

21 25. The Membership Agreement grants the Best Western member a limited,
22 non-exclusive Best Western License, thereby allowing them to use the Best Western Symbols
23 in connection with the Hotel, subject to the terms of the Best Western License, and only for
24 the duration of the Best Western License.
25

 26. Termination of the Best Western Membership results in termination of
the Best Western License, and imposes the obligation to "*remove* from public view and cease

1 using” all Best Western Symbols and all other references to Best Western within 15 days of
2 the date of termination. *See* Membership Agreement at ¶ 22.

3 27. Upon termination of the Best Western License, the former member(s)
4 must “actively take steps as may be necessary to cause the cessation of all advertising and
5 distribution of promotional material containing any Best Western Symbol.” *See* Membership
6 Agreement at ¶ 22.

7 28. Upon termination of the Best Western License, the former member(s)
8 must not use “anything consisting of or incorporating any one or more words, letters, designs
9 or devices which contain any part of any Best Western Symbol, or which singly or together
10 are similar in spelling, sound, appearance or otherwise to any Best Western Symbol.” *See*
11 Membership Agreement at ¶ 23.

12 29. The Regulatory Documents also state that:

13 Upon termination or cancellation of membership, the former Best
14 Western member *shall remove the Best Western sign When*
15 *the sign cabinet is removed, it must be destroyed or modified so*
16 *that the top of the cabinet has no curvilinear features* The
17 cost of removal of Best Western identification upon termination
shall be the responsibility of the former member.

18 *See* Rules and Regulations, Section 300.6, attached here as Exhibit 2.

19 30. Defendants terminated their Best Western membership on November 30,
20 2010.

21 31. The cancellation of the membership resulted in cancellation of the
22 License to use Best Western Symbols, and therefore Defendants were obligated to remove
23 them within 15 days of November 30, 2010—by December 16, 2010.
24
25

1 32. On December 22, 2010, in the ordinary course of its business, Best
2 Western sent its representative to the Hotel. As part of her regular duties, Best Western's
3 representative observed the Best Western name displayed at the front of the Hotel, and Best
4 Western Symbols displayed throughout the Hotel, including on signs, placards, phone plates,
5 and numerous service items (pens, notepads, guest comment cards, room keys, room key
6 holders, room service menus, ice boxes, shampoo, laundry bags, condiment kits, guest
7 directories, stationery, and do-not-disturb signs). Additionally, although the main sign for the
8 Hotel was covered, the Best Western logo was visible when the sign was lit at night. See
9 photographs attached as Exhibit 3.
10

11 33. In a letter dated January 14, 2011, Best Western advised the Defendants
12 that they must discontinue any unauthorized use of the Best Western name, signs, and logos;
13 remove any and all listings of the Hotel on internet websites under the Best Western name;
14 and disclose the use/registration of any domain names comprising any of the Best Western
15 marks, and transfer such domain names to Best Western International. A copy of the January
16 14, 2011 letter is attached as Exhibit 4.
17

18 34. On March 30, 2011, in the ordinary course of its business, Best Western
19 again sent its representative to the Hotel. As part of her regular duties, Best Western's
20 representative observed that the Best Western name was still displayed on the front of the
21 Hotel. Additionally, signs bearing the Best Western logo still appeared in the Hotel's parking
22 lot, and on a construction sign posted inside the Hotel. Although the main sign for the Hotel
23 was covered, a Best Western logo was still visible when the sign was lit at night. See
24 photographs attached as Exhibit 5. Best Western's representative was not permitted to view
25

1 the inside of any guest rooms.

2 35. Despite that it is no longer a Best Western, the December 22, 2010
3 inspection and subsequent March 30, 2011 inspection revealed that the Hotel continued to
4 hold itself out as a Best Western member after the License terminated.

5
6 36. Defendants' failure to remove the items bearing the Best Western
7 Symbols used in connection with the operation of the Hotel is likely to lead the travelling
8 public to believe that the Hotel is a Best Western property.

9
10 37. Defendants' failure to remove items containing the Best Western
11 Symbols in the Hotel irreparably injures Best Western and its members.

12 38. Defendants' continued use of Best Western Symbols beyond December
13 16, 2010 also constitutes a breach of the Membership Agreement.

14 39. Defendants' intentional and unlawful use of the Best Western Symbols in
15 connection with the Hotel is likely to cause confusion for the travelling public and for those
16 who stayed at the Hotel with the mistaken belief that the Hotel was a Best Western property.

17 40. Defendants' misconduct also likely diverted to them the benefit of and/or
18 damaged the reputation and goodwill that Best Western built through the years.

19
20 41. Best Western has fully performed all of its obligations under the
21 Membership Agreement.

22 **COUNT I – BREACH OF CONTRACT; POST TERMINATION USE OF**
23 **TRADEMARKS**

24 42. Best Western incorporates by reference the allegations contained in
25 paragraphs 1 through 41 above as though fully set forth herein.

1 43. Pursuant to the express terms of the Membership Agreement, Defendants
2 were obligated to remove from public view, and to cease all use of, the Best Western Symbols
3 in connection with the Hotel within fifteen (15) days after termination. This prohibition
4 includes making any representation, whether direct or indirect, indicating that the Hotel is
5 affiliated with Best Western.
6

7 44. Defendants continued to hold the Hotel out as a Best Western property
8 after the License terminated.

9 45. Paragraph 24 of the Membership Agreement provides for liquidated
10 damages where, as here, a former member continues to use the Best Western Symbols in
11 connection with the Hotel for more than fifteen (15) days following the termination of their
12 Best Western membership and the Best Western License. The amount of liquidated damages
13 is equal to fifteen percent (15%) of the mean of the Hotel's room rates per day, multiplied by
14 the total number of rooms for every day that a former member continues to use the Best
15 Western Symbols beyond the fifteen-day period.
16

17 46. Beginning December 16, 2010, Defendants owe \$777.88 per day for each
18 day they are unlawfully using the Best Western Symbols. The liquidated damages
19 calculations are based on the Hotel's information regarding daily rates and total number of
20 rooms. A copy of the Marketing Statistics Report showing the Average Daily Rates (ADR)
21 for the Hotel and the Best Western Account Information Computer Screen, showing the
22 number of units for the Hotel, are attached as Exhibit 6.
23

24 47. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
25 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in

1 pursuing this action.

2 **COUNT II – FEDERAL TRADEMARK INFRINGEMENT**
3 **(15 U.S.C. § 1114(1))**

4 48. Best Western incorporates by reference the allegations contained in
5 paragraphs 1 through 47 as though fully set forth herein.

6 49. Defendants have failed to cease and desist from the use of the federally
7 registered Best Western Symbols in connection with the Hotel.

8 50. Both inspections revealed myriad federally registered Best Western
9 Symbols displayed at the property well after the License terminated.

10 51. Defendants' actions complained of have at all times been without Best
11 Western's consent. Defendants' acts constitute infringement of the federally registered Best
12 Western Symbols in violation of 15 U.S.C. § 1114(1).

13 52. Defendants' acts complained of have damaged Best Western irreparably.
14 Monetary damages will not afford full and adequate relief for all of Best Western's injuries
15 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill
16 and reputation in the marketplace that money cannot sufficiently compensate. Best Western
17 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and
18 enjoining Defendants and their respective officers, members, agents, servants, employees, and
19 any other persons or entities acting on behalf of or in concert with Defendants, from using the
20 Best Western Symbols or any colorable imitation thereof, in connection with the promotion,
21 advertisement, and sale of goods and services without Best Western's authorization, pursuant
22 to 15 U.S.C. § 1116.

1 53. Defendants' infringement is willful. Accordingly, Best Western is
2 entitled to recover all damages sustained as a result of the unlawful conduct, including three
3 times Defendants' profits and Best Western's damages, as well as the costs of this suit and
4 attorneys' fees, pursuant to 15 U.S.C. § 1117.
5

6 **COUNT III – FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**
7 **(U.S.C. § 1125(a))**

8 54. Best Western incorporates by reference the allegations contained in
9 paragraphs 1 through 53 above as though fully set forth herein.

10 55. Defendants' unauthorized use of the Best Western Symbols is likely to
11 cause the public to believe, erroneously, that the Hotel and its services are sponsored by,
12 endorsed by, or associated with Best Western.

13 56. Defendants' operation and competition with Best Western through
14 infringement of the federally registered Best Western Symbols in connection with the Hotel
15 constitutes a false designation of origin and unfair competition under 15 U.S.C. § 1125(a).
16

17 57. Defendants' conduct has caused Best Western to suffer immediate,
18 irreparable, and continuous loss, including injury to its goodwill and reputation.

19 58. Upon information and belief, Defendants have undertaken the acts
20 complained of herein willfully and with the intent to cause confusion, mistake, and deception
21 on the part of the public.
22

23 59. If Defendants are using the Best Western Symbols unlawfully, unless
24 restrained by this Court, they will continue to commit the foregoing acts of unfair
25 competition.

1 60. Defendants' acts complained of have damaged Best Western irreparably.
2 Monetary damages will not afford full and adequate relief for all of Best Western's injuries
3 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill
4 and reputation in the marketplace that money cannot sufficiently compensate. Best Western
5 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and
6 enjoining defendants and their respective officers, members, agents, servants, employees, and
7 any other persons or entities acting on behalf of or in concert with Defendants, from using the
8 Best Western Symbols or any colorable imitation thereof, in connection with the promotion,
9 advertisement, and sale of goods and services without Best Western's authorization, pursuant
10 to 15 U.S.C. § 1116.
11
12

13 61. Defendants' acts of unfair competition are willful and entitle Best
14 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.

15 **COUNT IV – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

16 62. Best Western incorporates by reference the allegations contained in
17 paragraphs 1 through 61 above as though fully set forth herein.
18

19 63. Best Western has advertised and publicized the Best Western Symbols
20 extensively for decades throughout the United States, including the State of Arizona. As a
21 result of their inherent distinctiveness and extraordinarily widespread use, the Best Western
22 Symbols have acquired a high degree of recognition and fame for hotel services.
23

24 64. Defendants' unauthorized post-termination use of the Best Western
25 Symbols in commerce began long after Best Western's Symbols had already become famous
throughout the United States, including the State of Arizona.

1 65. Defendants' unauthorized post-termination use of the Best Western
2 Symbols or variations thereof is likely to cause dilution of the distinctive quality of the Best
3 Western Symbols.

4 66. Upon information and belief, Defendants have committed the acts
5 complained of herein willfully and with the intent to trade on Best Western's reputation
6 and/or to cause dilution of Best Western's famous Symbols.

7 67. Defendants' acts complained of have damaged Best Western irreparably.
8 Monetary damages will not afford full and adequate relief for all of Best Western's injuries
9 resulting from Defendants' conduct. Such injuries include harm to Best Western's goodwill
10 and reputation in the marketplace that money cannot sufficiently compensate. Best Western
11 is, therefore, requesting and entitled to a preliminary and permanent injunction restraining and
12 enjoining defendants and their respective officers, members, agents, servants, employees, and
13 any other persons or entities acting on behalf of or in concert with Defendants, from using the
14 Best Western Symbols or any colorable imitation thereof, in connection with the promotion,
15 advertisement, and sale of goods and services without Best Western's authorization, pursuant
16 to 15 U.S.C. § 1116.

17 68. Defendants' acts of unfair competition are willful and entitle Best
18 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.

19
20 **COUNT V – UNFAIR COMPETITION – ARIZONA LAW**

21 69. Best Western incorporates by reference the allegations contained in
22 paragraphs 1 through 68 above as though fully set forth herein.
23
24
25

1 70. Defendants' acts complained of herein constitute unfair competition
2 under the laws of the State of Arizona.

3 71. Defendants have been unjustly enriched and have damaged Best
4 Western's business, reputation, and goodwill.

5 72. Upon information and belief, Defendants' acts complained of herein
6 were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad
7 faith and with the intent to confuse and deceive the public.

8 73. Defendants' acts complained of herein have caused Best Western
9 irreparable harm for which there is no adequate remedy at law.
10

11 **COUNT VI – TRADEMARK DILUTION UNDER ARIZONA LAW -**
12 **(A.R.S. § 44-1448.01)**

13 74. Best Western incorporates by reference the allegations contained in
14 paragraphs 1 through 73 above as though fully set forth herein.

15 75. The Best Western Symbols are famous within the State of Arizona, and
16 became famous in Arizona long before Defendants began using the marks.

17 76. Defendants' acts complained of herein constitute commercial use of a
18 mark or trade name that is likely to cause dilution of the distinctive quality of the famous Best
19 Western Symbols.
20

21 77. Defendants have undertaken these acts willfully and with the intent to
22 trade on Best Western's reputation or to cause dilution of the Best Western Symbols.

23 78. Defendants' acts complained of herein caused, or are likely to cause,
24 dilution to the famous Best Western Symbols in violation of A.R.S. § 44-1448.01.
25

1 79. Defendants' acts complained of herein have caused irreparable harm and
2 injury to Best Western's famous Best Western Symbols, business reputation, and goodwill for
3 which there is no adequate remedy at law.

4 **COUNT VII – TRADEMARK INFRINGEMENT UNDER ARIZONA LAW -**
5 **(A.R.S. § 44-1451)**

6 80. Best Western incorporates by reference the allegations contained in
7 paragraphs 1 through 79 above as though fully set forth herein.

8 81. The Best Western Symbols are famous within the State of Arizona, and
9 became famous in Arizona long before Defendants began using the marks.

10 82. Defendants' acts complained of herein constitute commercial use of a
11 mark or trade name and trademark infringement based on Arizona registered Trademark No.
12 51370 in violation of A.R.S. § 44-1451.

13 83. Upon information and belief, Defendants have undertaken these acts
14 willfully and with the intent to trade on Best Western's reputation and to cause confusion,
15 mistake, and deception on the public.

16 84. Defendants' acts complained of herein have caused irreparable harm and
17 injury to Best Western's famous Best Western Symbols, business reputation, and goodwill for
18 which there is no adequate remedy at law.

19 **COUNT VIII – COMMON LAW TRADEMARK INFRINGEMENT**

20 85. Best Western incorporates by reference the allegations contained in
21 paragraphs 1 through 84 above as though fully set forth herein.

1 B. With respect to Counts II through VIII:

2 An order requiring Defendants to make an accounting of the profits
3 derived by them by reason of their unlawful acts, holding Defendants liable to Best Western
4 for such profits, and awarding Best Western its actual damages suffered as a result of the
5 trademark infringement complained of against Defendants, in an amount to be proven at trial.
6

7 C. With respect to Counts II, III, and IV:

8 An award of treble damages against Defendants pursuant to 15 U.S.C. §
9 1117(b) or, alternatively, an award of liquidated damages to Best Western against Defendants
10 calculated in the manner provided for in ¶ 24 of the Membership Agreement, whichever is
11 greater.
12

13 D. With respect to all Counts:

14 1. Temporary, preliminary, and permanent injunctive relief enjoining
15 Defendants and their respective officers, members, agents, servants, and employees, and any
16 other persons and entities acting on behalf of or in concert with Defendants, to immediately
17 and permanently remove all Best Western Symbols as used on the premises of, or in reference
18 to, the Hotel, including (without limitation) any advertisements, signage or any other display
19 or items bearing any of the Best Western Symbols.
20

21 2. Temporary, preliminary, and permanent injunctive relief ordering
22 Defendants to cause the removal of all Best Western Symbols from advertisements and
23 signage relating to the Hotel, and reimbursement of costs incurred by Best Western to cause
24 the removal of the same should Defendants fail to do so (in addition to whatever penalties the
25

1 Court may impose upon Defendants for failing to comply with the Court's order to remove
2 any infringing signs, displays, or items from the Hotel) within ten (10) days of the injunction.

3 3. Attorneys' fees and costs incurred herein against Defendants
4 pursuant to the Membership Agreement, A.R.S. §§ 12-341 and 12-341.01, and/or 15 U.S.C. §
5 1117(a), (or any other applicable law).
6

7 4. An award to Best Western of its damages in an amount to be
8 proven at trial.

9 5. As allowed by law, an award of special exemplary and/or punitive
10 damages in an amount to be determined at trial.

11 6. For such other and further relief as the Court deems just and
12 proper in the circumstances.
13

14 DATED this 20th day of April, 2011.

15 CURTIS, GOODWIN, SULLIVAN,
16 UDALL & SCHWAB, P.L.C.

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